

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

**JOHN LUCZKOVICH,**

**Plaintiff,**

**vs.**

**CIV 11-0923 JCH/KBM**

**WALMART ASSOCIATES,**

**Defendant.**

**ORDER ADOPTING MAGISTRATE JUDGE'S PROPOSED FINDINGS AND  
DISMISSING ACTION WITHOUT PREJUDICE**

The Magistrate Judge filed her proposed findings on October 26, 2011, and recommended that Plaintiff's motion to proceed IFP be denied and his Complaint dismissed without prejudice under § 1915(e)(2)(B)(ii). *See Doc. 7* at 6. The proposed findings notify Petitioner of his ability to file objections and that failure to do so waives appellate review. *See id.* at 1, n.1 The time to file objections expired on November 14, 2011. To-date, Petitioner has not filed any objections and there is nothing in the record indicating that the proposed findings were not delivered.

Wherefore,

**IT IS HEREBY ORDERED AS FOLLOWS:**

1. The Magistrate Judge's Proposed Findings and Recommended Disposition (*Doc. # 7*) is ADOPTED; and
2. This action is dismissed WITHOUT PREJUDICE pursuant to § 1915(e)(2)(B)(ii), *Lister v. Dep't of Treasury*, 408 F.3d 1309, 1312 (10<sup>th</sup> Cir. 2005), and *Trujillo v. Williams*, 465 F.3d 1210, 1217 (10<sup>th</sup> Cir. 2006) .

  
UNITED STATES DISTRICT JUDGE